IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO.48 OF 2006

Sandeep Jayant Bhatt & Anr. : Petitioners

V/s.

The Board of Industrial and Financial Reconstruction & Ors. : Respondents

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Ms Tannu Mehta Tiwari i/b. Ms Aparna Shinde for the petitioners.

Mr.Virag Tulzapurkar, senior counsel, with Ms Saumya Srikrishna i/b. M/s.Kanga & Co., for respondent nos.2 to 4.

Ms S. Ajithkumar for respondent no.5.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : OCTOBER 11, 2006.

P.C.

1. We heard Ms Tannu Mehta Tiwari, the counsel for the petitioners, and Mr.Virag Tulzapurkar, senior counsel for respondent nos.2 to 4.

2. The scheme sanctioned by the Board for Industrial and Financial Reconstruction (BIFR) reads thus:-

"3.0 SCHEME

Following are the Salient features of Revival Scheme.

a) M/s.Nar Narayan Saraf & Associates would take over the company with all assets and liabilities from Singh Brothers by acquisition of their shareholdings.

b) The outstanding dues of Central Bank of India approximately Rs.623 lacs as on 30.12.93 shall be settled for a lumpsum of Rs.545 lacs.

c) VRS shall be offered to the existing workers, staff members, who were on the roll of the Company at the time of its closure.

d) Fresh appointments of young ITI qualified persons, and professionals will be made to run the unit.

e) Land at Baroda will be sold, and surplus built up area at Lower Parel and Surplus FSI at Andheri will be given on long lease to mobilise long term funds to meet cost of the Scheme.

f) Incoming Promoters have also proposed collaboration with a foreign Firm which will include buy back arrangement for the Company's products. Any additional requirement of funds for this purpose will be met by the new Promoters."

3. The scheme provides that it costs Rs.1386 lakhs for revival as set out in para 3.1. The means of finance is provided in para 3.2 of the scheme. That reads thus:-

Rs. in lacs

"Promoters contribution by increasing

the capital and interest free un-secured loans.	776
Finance from Leasing Cos.	150
Sale of current Assets	130
Long term Lease deposit by leasing out Lower Parel property and surplus FSI at Andheri.	210
Net realisation from Sale of land at Baroda.	120
	1386"

4. It will thus be seen that the revival scheme provides for procuring of finance from long term deposit by leasing out Lower Parel property and surplus FSI at Andheri and net realisation from sale of land at Baroda.

5. The grievance of the petitioners by means of this public interest litigation is that though the revival scheme was sanctioned by the BIFR, such scheme has not been implemented and that the company (respondent no.2) has violated the scheme sanctioned by the BIFR and, therefore, the B.I.F.R. be directed to register a complaint of offence under section 33(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short the "Act of 1985") against the respondent nos.2 to 4.

6. It appears from the documents annexed to the Writ

Petition that on 27.12.2003, one I.A. Engineer, Advocate, sent a notice on behalf of Sarva Shramik Sangh to the B.I.F.R. asking the B.I.F.R. to take suitable action against the company, defaulters or new promoters for having violated the sanctioned scheme. Section Officer on behalf of B.I.F.R. sent a communication to Mr.I.A. Engineer on 27.2.2004 that the Board has closed the proceedings in the case of implementation of the rehabilitation scheme on 19.4.1996 and no action is being taken at his request. It appears that thereafter the present Writ Petition in the nature of public interest litigation has been filed.

7. Section 33 of the Act of 1985 provides for penalty for certain offences. It reads thus:-

> "**33. Penalty for certain offences**.-- (1) Whoever violates the provisions of this Act or any scheme, or any order of the Board, or the Appellate Authority and whoever makes a false statement or gives false evidence to the Board or the Appellate Authority, shall be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine.
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> (2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of the Secretary or any such other officer of the Board or the Appellate Authority or any such officer of an operating agency as may be authorised in this behalf by the Board or the Appellate Authority."

8. It would thus be seen that a person who violates any provisions of the Act of 1985 or any scheme framed thereunder is punishable with simple imprisonment for a term extending to three years and shall also be liable to fine. However, cognizance of such offence cannot be taken by any Court unless a written complaint is lodged, inter alia, by the Secretary of the B.I.F.R. The scheme was sanctioned in the year 1994. The Board closed the proceedings with regard to the implementation of the scheme on 19.4.1996. The 1st petitioner who is an erstwhile employee of the respondent no.2 company admittedly received some financial benefits under the scheme. There is nothing on record that if there was violation of the scheme by the respondent no.2, why for the first time on 27.12.2003, notice was sent on behalf of the 2nd petitioner asking for action against the respondent no.2 and the new promoters. Since implementation of the scheme was closed by the B.I.F.R. way back on 19.4.1996, it cannot be said that while refusing to take any action against the respondent no.2, pursuant to the notice sent by the 2nd petitioner, any illegality has been committed by the B.I.F.R. We hardly find any justification in entertaining this PIL. If there is continuing violation of the scheme by the respondent no.2 or any other person bound by the scheme,

it is always open to the petitioners to approach the B.I.F.R. for appropriate action.

9. Order accordingly.

10. Writ Petition (PIL) stands disposed of.

Sd/-

R.M. LODHA, J.

Sd/-

S.A. BOBDE, J.